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B. Jain, M. Morgan and M. McLean
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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 **MARC DAWSON,**

13 Plaintiff,

14 v.

15 **S. LATHAM, M. EDWARDS, B. JAIN,**
16 **M. MORGAN, M. MCLEAN and A.**
17 **THACKER,**

18 Defendants.

C 08-0741-JF(PR)

**ANSWER TO COMPLAINT FOR
DAMAGES; DEMAND FOR JURY
TRIAL**

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20 Defendants S. Latham, M. Edwards, B. Jain, M. Morgan and M. McLean, in response to
21 the Complaint for Damages and Demand for Jury Trial on file herein ("the complaint") admit,
22 deny, and allege as follows:

23 1. Defendants are without knowledge or information sufficient to form a belief as to
24 the truth of the allegations of paragraphs 1 and 2, and on that basis deny those allegations and
25 deny that plaintiff was injured or damaged in any sum, or at all.

26 2. Defendants admit the allegations contained in paragraph 3, except defendants are
27 without knowledge or information sufficient to form a belief as to the truth of the allegations that
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1 plaintiff was under the care of the medical staff employed by the CDC&R at Pelican Bay State
2 Prison, and on that basis deny those allegations.

3 3. Defendants deny the allegations of paragraph 4, except allege that S. Latham is
4 employed by the California Department of Corrections and Rehabilitation.

5 4. Defendants deny the allegations of paragraph 5, except allege that M. Edwards is
6 employed by the California Department of Corrections and Rehabilitation.

7 5. Defendants deny the allegations of paragraph 6, except allege that B. Jain is
8 employed by the California Department of Corrections and Rehabilitation.

9 6. Defendants deny the allegations of paragraph 7, except allege that M. Morgan is
10 employed by the California Department of Corrections and Rehabilitation.

11 7. Defendants deny the allegations of paragraph 8, except allege that M. McLean is
12 employed by the California Department of Corrections and Rehabilitation.

13 8. Defendants deny the allegations of paragraph 9, except allege that A. Thacker was
14 employed by the California Department of Corrections and Rehabilitation.

15 9. Defendants are without knowledge or information sufficient to form a belief as to
16 the truth of the allegations of paragraphs 10 through 63, and on that basis deny those allegations
17 and deny that plaintiff was injured or damaged in any sum, or at all.

18 **RELIEF**

19 Defendants admit that plaintiff seeks compensatory and punitive damages.

20 **AFFIRMATIVE DEFENSES**

21 **AFFIRMATIVE DEFENSE NO. 1.:**

22 The complaint and each cause of action therein fail to allege facts sufficient to constitute
23 a cause of action.

24 **AFFIRMATIVE DEFENSE NO. 2.:**

25 The complaint and each cause of action therein are uncertain.

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1 AFFIRMATIVE DEFENSE NO. 3.:

2 The complaint and each cause of action are barred by the statute of limitations applicable
3 to personal injury actions brought under state law.

4 AFFIRMATIVE DEFENSE NO. 4.:

5 The complaint and each cause of action therein are barred and this court is without
6 jurisdiction as there has been a failure to exhaust administrative remedies.

7 AFFIRMATIVE DEFENSE NO. 5.:

8 At all relevant times, plaintiff failed to mitigate injury and damages.

9 AFFIRMATIVE DEFENSE NO. 6.:

10 There is no basis for imposing liability on persons who are not personally involved in a
11 constitutional deprivation.

12 AFFIRMATIVE DEFENSE NO. 7.:

13 Plaintiff has waived any right to relief for the causes of action alleged in the complaint.

14 AFFIRMATIVE DEFENSE NO. 8.:

15 This court lacks subject matter jurisdiction over the causes of action alleged in the
16 complaint herein because the allegations do not state a cause of action for constitutional tort, or
17 any cause of action at all.

18 AFFIRMATIVE DEFENSE NO. 9.:

19 The complaint herein fails to state facts sufficient to constitute a cause of action in that
20 simple negligence, if any exists, which defendants deny, is not a federal civil rights violation.

21 AFFIRMATIVE DEFENSE NO. 10.:

22 The defendants have not deprived any person of any right, privilege or immunity
23 guaranteed by the Constitution or laws of the United States. There has been no deprivation of
24 any right, privilege or immunity guaranteed by the laws or Constitution of the United States.

25 AFFIRMATIVE DEFENSE NO. 11.:

26 The defendants are entitled to qualified and official and quasi-judicial immunity.
27 Defendants acted at all times herein relevant in good faith, with due care, within the scope of
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1 discretion, and pursuant to laws, regulations, rules, and practices reasonably believed to be in
2 accordance with the Constitution and laws of the United States. There is no liability pursuant to
3 the Federal Civil Rights Act where one acts in good faith and entertains an honest, reasonable
4 belief that one's actions are in accord with the clearly-established law.

5 **DEMAND FOR JURY TRIAL**

6 Answering defendants respectfully demand trial by jury and a court reporter at time of
7 trial.

8 WHEREFORE, defendants pray that:

- 9 1. Judgment be rendered in favor of defendants and against the plaintiff; and
- 10 2. The plaintiff take nothing by the complaint; and
- 11 3. Defendants be awarded costs of suit and attorneys' fees incurred herein; and
- 12 4. Defendants be awarded such other and further relief as the court may deem
13 necessary and proper.

14 Dated: July 21, 2008

15 Respectfully submitted,

16 EDMUND G. BROWN JR.
Attorney General of the State of California

17 PAUL T. HAMMERNESS
Supervising Deputy Attorney General

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19
20 /s/ **HARRY T. GOWER, III**

21 HARRY T. GOWER, III
Deputy Attorney General

22 Attorneys for Defendants S. Latham, M. Edwards,
23 B. Jain, M. Morgan and M. McLean

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: *Dawson v. Latham, et al.*

No.: **C 08-0741-JF(PR)**

I, Corazon Marcelino, declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On July 21, 2008, I served the attached **ANSWER TO COMPLAINT FOR DAMAGES; DEMAND FOR JURY TRIAL** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

**Marc Charles Dawson
P-13296
High Desert State Prison
P.O. Box 3030
Susanville, CA 96127-3030**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 21, 2008, at San Francisco, California.

Corazon Marcelino

Declarant

/s/ **Corazon Marcelino**

Signature